

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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AUG 10 1994

RECEIVED FOR THE SECRETARY
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)
)
Implementation of Section 17 of the)
Cable Television Consumer Protection)
and Competition Act of 1992)
)
Compatibility Between Cable Systems)
and Consumer Electronics Equipment)

ET Docket No. 93-7

**REPLY OF GENERAL INSTRUMENT CORPORATION
TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION**

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SUMMARY

The Commission should reject those proposals arguing for a prohibition on cable operators' ability to offer integrated component descrambler/decoders that perform both security and non-security functions. As long as operators make security-only modules available to subscribers, they should also be permitted to offer such integrated equipment.

In addition, the Commission should eliminate its infrared alteration ban, in all of its forms. This ban finds no support in the record, marketplace realities, or the 1992 Cable Act. Rather, it is a draconian prohibition whose costs and anti-competitive, anti-innovation effects will substantially outweigh the alleged consumer benefits cited by its proponents.

Finally, because the extension of the Decoder Interface to set-top boxes is beyond the scope of the C3AG negotiations and unsupported by the record in this proceeding, GIC urges the Commission to reject the Retailer Coalition's proposal that the Decoder Interface be employed to separate security and non-security functions in set-top boxes.

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"CONSUMER ELECTRONICS COMPATIBILITY"
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and Competition Act of 1992)
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Compatibility Between Cable Systems)
and Consumer Electronics Equipment)

**REPLY OF GENERAL INSTRUMENT CORPORATION
TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION**

General Instrument Corporation ("GIC") hereby files its
reply to oppositions in the above-captioned proceeding.¹

**I. AS LONG AS CABLE OPERATORS MAKE SECURITY-ONLY COMPONENT
DESCRAMBLER/DECODERS AVAILABLE TO THEIR SUBSCRIBERS, THEY
SHOULD BE ALLOWED TO OFFER COMPONENT DESCRAMBLER/DECODERS
THAT INTEGRATE SECURITY AND NON-SECURITY FUNCTIONS**

In its previous comments, GIC urged the Commission to
clarify that the Compatibility Order's requirement that the
Decoder Interface allow "access control functions to be separated
from other functions" does not preclude cable operators from
offering component descrambler/decoders² that perform functions

¹ Equipment Compatibility, First Report and Order, 9 FCC
Rcd. 1981 (1994) ("Compatibility Order").

² "Component descrambler/decoders" are devices connected
to the Decoder Interface on "cable ready" sets that process cable
signals after they are received and processed by the set, thereby
allowing full use of TV/VCR features. See "Consumer Electronics
and Cable System Compatibility," Report to the Congress, October
1993, at 10.

other than the security function.³ GIC is pleased to find that all commenters acknowledge that cable operators must be permitted to provide non-security functions through component descrambler/decoders.⁴

Notwithstanding this consensus that cable operators should be permitted to offer non-security functions through component descrambler/decoders, there is some disagreement over how cable operators may package their security and non-security offerings. In this regard, GIC strongly opposes the suggestions made by certain commenters that would allow cable operators to provide non-security functions through component descrambler/decoders only if these non-security functions are offered in hardware that is physically separated from the hardware in which the security function is performed.⁵

A preferable approach for the Commission is to specify that as long as cable operators make security-only component descrambler/decoders available to their subscribers, they should also be permitted to offer integrated component descrambler/decoders that perform both security and non-security

³ See Comments of General Instrument Corporation in Support of Petition for Reconsideration of NCTA ("GIC Comments").

⁴ See Comments on Reconsideration of The Compaq Computer Corporation at 8-9 ("Compaq Opposition"); Opposition and Comments of Consumer Electronics Retailers Coalition at 5 ("Coalition Opposition"); Opposition and Comments of the Consumer Electronics Group of the Electronic Industries Association at 5 ("EIA/CEG Opposition").

⁵ See Compaq Opposition at 8-9; Coalition Opposition at 5.

functions. Several members of the consumer electronics industry support this approach. For example, EIA/CEG notes that as long as "cable operators ... make security-only decoders available to their subscribers," they should be able to provide "an integrated set-back module containing both security and non-security functions."⁶

Moreover, this approach is wholly consistent with longstanding antitrust jurisprudence. The U.S. Supreme Court has clearly stated:

Of course, where the buyer is free to take either product by itself there is no tying problem even though the seller may also offer the two items as a unit at a single price.⁷

In short, an integrated package of security and non-security functions will pose no threat to equipment competition as long as the various components of the integrated package are available to consumers who wish to "mix and match." It is the availability of unbundled equipment, not a requirement that all equipment be unbundled, that provides benefits to consumers and fosters a competitive equipment marketplace. Under this approach,

⁶ EIA/CEG Opposition at 4-5. See also Compaq Opposition at 9.

⁷ Northern Pacific Railway Company and Northwestern Improvement Company v. U.S.A., 356 U.S. 1, 6, n. 4 (1958). See also ABA Antitrust Section, Antitrust Law Developments 143-144 (3rd ed. 1992). Additionally, the Commission's actual cost standard for cable equipment pricing will prevent cable operators from structuring their offerings in a manner that makes the purchase of an integrated component descrambler/decoder the only realistic option for subscribers. See 47 C.F.R. §§ 76.923(a), (j).

consumers will be free to purchase or lease non-security functions from suppliers other than the cable operator.

In fact, a prohibition on operator provision of integrated component descrambler/decoders will forego the production efficiencies afforded by such integrated offerings and also limit consumer choice. As Time Warner correctly points out, the cost savings represented by integrated solutions should not be overlooked by the Commission:

[I]f the microprocessor has to be duplicated in order to provide the on-screen display and forced tuning capabilities in a physically separate unit, the cost to the consumer would be significantly higher than if those functions were provided within the descrambler circuitry.⁸

Further, as marketplace experience demonstrates, many consumers, if given the choice, will opt for integrated packages over component offerings. For example, many consumers prefer to purchase an integrated telephone/answering machine, or a stereo unit along with their new car, or a personal computer with a built in fax/modem. Similarly, many cable subscribers would prefer to lease an integrated component descrambler/decoder from their cable operator rather than undertake the effort of shopping around and integrating various modules themselves. The main point in each of these scenarios is that as long as a standard interface exists and the consumer has the choice to purchase/lease either the integrated package or the constituent parts comprising the package, consumer choice and competition is

⁸ Opposition of Time Warner at 8.

enhanced. In the instant proceeding, consumer choice and equipment competition will be enhanced, as long as: (1) the Decoder Interface is robust and two-way;⁹ and (2) subscribers have the option of obtaining from the cable operator either a security-only module or an integrated component descrambler/decoder.

II. THE COMMISSION SHOULD ELIMINATE THE INFRARED ALTERATION BAN

The record in this proceeding overwhelmingly establishes that the Commission's infrared alteration ban¹⁰ finds no support in the record, marketplace realities, or the 1992 Cable Act.¹¹ As GIC demonstrated in its petition for reconsideration:

- the ban relies on an unjustifiable broadening of the plain language and underlying intent of Section 17(c)(2)(E) of the 1992 Cable Act, neither of which supports such a cable-financed insurance program for individual subscriber-owned remote control units;¹²
- the ban is both overinclusive and underinclusive -- overinclusive in that it punishes all operators prospectively, regardless of individual operator practices, and underinclusive in that it unjustifiably singles out cable operators without any explanation as to why TV/VCR manufacturers are not also covered;¹³

⁹ See GIC Comments at 4.

¹⁰ 47 C.F.R. § 76.630(c).

¹¹ See ANTEC Petition at 1-4; Cablevision Petition at 3-9; CATA Petition at 2-5; GIC Petition at 1-17; Hewlett-Packard Opposition at 1-6; NCTA petition at 3-8; Scientific Atlanta Petition at 4-8; TeleCable Petition at 1-4; Time Warner Petition at 1-7; Zenith Petition at 4-5.

¹² GIC petition at 6-7.

¹³ Id. at 7-9.

- the Commission seriously underestimates the technical difficulties, costs, and burdens that the ban will impose on cable operators and set-top manufacturers;¹⁴
- the ban will thwart competition in the supply of set-top converters to cable systems by encouraging operators to favor their existing set-top suppliers to the detriment of potential new entrants;¹⁵ and
- the ban will create significant disincentives for set-top suppliers to develop, and cable operators to implement, advanced IR code schemes and new remote control technologies which might otherwise increase efficiencies and subscriber options.¹⁶

While EIA/CEG and CFA/HRRC support the infrared alteration ban,¹⁷ neither provides convincing responses to the concerns listed above.¹⁸ Nor do they offer any legal basis or sound policy rationale for maintaining this draconian prohibition. Their logic seems to be as follows: In the past, certain cable operators intentionally disabled consumer-owned remote controls;

¹⁴ Id. at 9-13.

¹⁵ Id. at 13-15.

¹⁶ Id. at 15-17.

¹⁷ See EIA/CEG Opposition at 5-10; Consumer Federation of America/Home Recording Rights Coalition at 2-10 ("CFA/HRRC").

¹⁸ For example, EIA/CEG responds to arguments that the ban will tie each operator to its existing set-top supplier, thereby stifling competition, by arguing that the leverage MSOs have over their suppliers will enable them to specify the IR codes included in new set-top equipment. EIA/CEG Opposition at 7. However, as GIC noted in its petition, this argument overlooks the fact that many cable systems, especially small systems, may not be able to make the large quantity orders necessary to allow them to dictate the preferred IR code configuration to set-top suppliers. See GIC petition at n. 21. Moreover, the mere fact that operators, in large quantity orders, will be able to specify the codes to be used in new equipment is immaterial, since in many cases the operator may not even know the full range of codes to specify. Id. at 14-15.

therefore, the Commission must prevent this from recurring by adopting a rule that forces all operators to serve as eternal guardians for all subscriber-owned remote controls. However, as GIC observed in its petition, given the Commission's equipment regulations and the increasing competitive threat posed by emerging video distribution alternatives, cable operators have no incentive to engage in the putative anticompetitive behavior cited by CFA/HRRC and EIA/CEG as justification for the ban.¹⁹

Moreover, despite the fact that the inadvertent disabling of subscriber-owned remotes due to IR code changes is at least as real a possibility in the consumer electronics realm as it is in the cable realm,²⁰ EIA/CEG argues that the ban should not apply to consumer electronics products.²¹ EIA/CEG claims that Section 17 of the 1992 Cable Act was solely concerned with the incompatibilities caused by cable boxes, not consumer electronics equipment, and therefore that any restrictions on IR codes should apply only to operator-supplied cable boxes.²²

GIC finds it incredible that at this late date EIA/CEG would even suggest that Section 17 -- which unambiguously directs the Commission to adopt rules to assure compatibility between cable systems and consumer electronics equipment, consistent with the

¹⁹ See GIC Petition at 1-5.

²⁰ See GIC Petition at 8-9; NCTA Petition at 6-7; TeleCable Petition at 4.

²¹ EIA/CEG Opposition at 9-10.

²² Id.

need to prevent theft of cable service -- does not apply to equipment manufactured by EIA/CEG's constituents. Equally troubling is EIA/CEG's failure to explain why the incompatibilities caused by altered IR codes in consumer electronics equipment should be less of a concern to the Commission. GIC submits that EIA/CEG's attempt to elude application of the infrared alteration ban is a testament to the draconian nature of this prohibition -- a prohibition whose costs and anti-competitive, anti-innovation effects will substantially outweigh the alleged consumer benefits cited by its proponents. While GIC agrees with EIA/CEG that the ban should not apply to consumer electronics manufacturers, nor should it apply to cable operators. The ban is bad policy and without legal support in either case, and therefore GIC once again respectfully urges the Commission to delete 47 C.F.R. § 76.630(c) from its rules.²³

III. THE COALITION'S PROPOSAL TO EXTEND THE DECODER INTERFACE STANDARD INTO SET-TOP EQUIPMENT IS BEYOND THE SCOPE OF THE C3AG NEGOTIATIONS AND INSUPPORTABLE ON THIS RECORD

The Coalition proposes that the Commission require that the Decoder Interface be employed to separate security and non-security functions in set-top boxes manufactured as of the date

²³ EIA/CEG's alternative proposal -- to prohibit cable operators from introducing new equipment that utilizes IR codes for existing functions that were not in use on the date of the Commission's Compatibility Order, EIA/CEG Opposition at 8-9 -- is equally insupportable as a matter of law and sound public policy. This modified ban would have the same anti-competition, anti-innovation, and discriminatory effects as the current rule, and, for the same reasons, should be rejected by the Commission.

on which the Decoder Interface is required on "cable-ready" TVs and VCRs.²⁴

Neither the C3AG negotiations nor the record in this proceeding supports such an extension of the Decoder Interface to set-top equipment. The C3AG negotiations have focused solely on developing a Decoder Interface that will be implemented in "cable ready" sets to facilitate communications and compatibility between these sets and component descrambler/decoders. Moreover, because the Commission's directive to design the Decoder Interface to separate security and non-security functions focused on component descrambler/decoders,²⁵ C3AG's further efforts to incorporate this requirement into the Decoder Interface standard have also focused on component descrambler/decoders. Thus, it is unclear how, if at all, the Decoder Interface would work with set-top devices.

Nor does the Coalition offer any suggestion as to how the Decoder Interface would or could be implemented in set-top devices, or how such an implementation would facilitate two-way communications and compatibility between presumably non-cable-ready sets and the set-tops. Since none of these issues has

²⁴ Coalition Opposition at 1-10.

²⁵ In discussing this separation requirement, the Commission stated, "As discussed in the next section, we support separation of these functions" Compatibility Order at ¶ 29 (emphasis added). The "next section" discusses the Decoder Interface in the context of component descrambler/decoders. See, e.g., id. at ¶ 41 ("We wish to emphasize that we consider the Decoder Interface connector and associated component descrambler/decoders to be an important part of our equipment compatibility program....").

previously surfaced in C3AG negotiations and since the record on these issues is wholly inadequate, it would be premature and arbitrary for the Commission to adopt the Coalition's proposal. Accordingly, GIC urges the Commission to reject it.

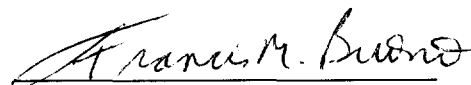
CONCLUSION

For the reasons set forth above, GIC respectfully urges the Commission to clarify and/or amend its compatibility rules consistent with the comments contained herein and with GIC's previous comments.

Respectfully submitted,

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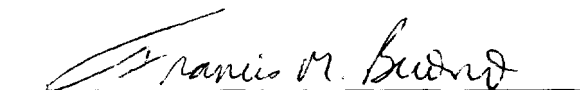
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